

ASSEMBLY BILL

No. 1634

**Introduced by Committee on Revenue and Taxation (Knox
(Chair), Kaloogian (Vice Chair), Aroner, Briggs, Ducheny,
Honda, and Romero)**

March 3, 1999

An act to amend Sections 1088 and 13050 of, and to add Section 13009.5 to, the Unemployment Insurance Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1634, as introduced, Committee on Revenue and Taxation. Taxation: unemployment insurance benefits: wages.

Existing unemployment insurance law requires each employer to file a report of wages paid to his or her workers and to furnish to each employee a written statement showing, among other things, the total amount of wages.

This bill would require the report and statement to include the total amount of wages subject to personal income tax.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1088 of the Unemployment
2 Insurance Code is amended to read:
3 1088. (a) (1) Each employer shall file with the
4 director within the time required by subdivision (a) or

1 (d) of Section 1110 for payment of employer
2 contributions, a report of contributions and a report of
3 wages paid to his or her workers in the form and
4 containing any information as the director prescribes. An
5 electronic funds transfer of contributions pursuant to
6 subdivision (f) of Section 1110 shall satisfy the
7 requirement for a report of contributions. The report of
8 wages shall include individual amounts required to be
9 withheld under Section 13020.

10 (2) (A) In order to enhance efforts to reduce tax fraud
11 and to reduce the personal income tax reporting burden,
12 effective January 1, 1997, the report of wages shall also
13 include the full first name of the employee and total
14 wages, as defined in Section 13009, paid to each employee.
15 This paragraph shall apply to reports of wages for ~~the 1997~~
16 ~~calendar year and after: all periods ending on or before~~
17 ~~December 31, 1999.~~

18 (B) *For all periods beginning on or after January 1,*
19 *2000, the report of wages shall also include total wages*
20 *subject to personal income tax, as defined in Section*
21 *13009.5, paid to each employee.*

22 (b) Each employer shall file with the director within
23 the time required by subdivision (b) or (d) of Section
24 1110 for payment of worker contributions, a report of
25 contributions containing the employer's business name,
26 address, and account number, the total amount of worker
27 contributions due, and any other information as the
28 director shall prescribe. The director shall prescribe the
29 form for the report of contributions. An electronic funds
30 transfer of contributions pursuant to subdivision (f) of
31 Section 1110 shall satisfy the requirement for a report of
32 contributions.

33 (c) In addition to the report of contributions and
34 report of wages required by employers under subdivision
35 (a), an individual who has elected coverage under
36 subdivision (a) of Section 708 is also required to file a
37 separate report of contributions, subject to Part 2
38 (commencing with Section 2601).

39 (d) Any employer making an election under
40 subdivision (d) of Section 1110 shall submit the report of

1 wages described in subdivision (a), within the time
2 required for submitting employer contributions under
3 subdivision (a) of Section 1110.

4 (e) In addition to the report of contributions and
5 report of wages described in subdivision (a), each
6 employer shall file with the director an annual
7 reconciliation return showing the total amount of wages,
8 employer contributions required under Sections 976 and
9 976.6, worker contributions required under Section 984,
10 the amounts required to be withheld under Section 13020,
11 and any other information as the director shall prescribe.
12 This annual reconciliation return shall be due on the first
13 day of January following the close of the prior calendar
14 year and shall become delinquent if not filed on or before
15 the last day of that month.

16 This subdivision shall not apply to individuals electing
17 coverage under Section 708 or 708.5 or employers
18 electing financing under Section 821.

19 (f) For purposes of making a report of wages under
20 subdivision (a), employers who are required under
21 Section 6011 of the Internal Revenue Code and
22 authorized regulations thereunder to file magnetic
23 media returns, shall, within 90 days of becoming subject
24 to this requirement, do one of the following:

25 (1) Submit a magnetic media format to the
26 department for approval, and upon receiving approval
27 from the department, submit any subsequent reports of
28 wages on magnetic media.

29 (2) Establish to the satisfaction of the director that
30 there is a lack of automation, a severe economic hardship,
31 a current exemption from submitting magnetic media
32 information returns for federal purposes, or other good
33 cause for not complying with the provisions of this
34 subdivision. Approved waivers shall be valid for six
35 months or longer, at the discretion of the director.

36 (g) The Franchise Tax Board shall be allowed access to
37 the information filed with the department pursuant to
38 this section.

39 (h) If an employer demonstrates that an undue
40 hardship would be imposed, the director may authorize

1 an exemption from the requirement in subdivision (a) to
2 report individual amounts withheld under Section 13020
3 and the requirement in subdivision (e) to file the annual
4 reconciliation return for the 1995 calendar year only. Any
5 request for exemption must be filed on or before January
6 15, 1995. Upon approval of a request for exemption under
7 this subdivision, the employer shall file quarterly returns
8 and reports of wages in the manner and method
9 prescribed by the director for the 1995 calendar year only.

10 SEC. 2. Section 13009.5 is added to the
11 Unemployment Insurance Code, to read:

12 13009.5. (a) For purposes of the report required by
13 subdivision (a) of Section 1088 and the statement
14 required by Section 13050, “wages subject to personal
15 income tax” means all of the following:

16 (1) Remuneration defined as wages by Section 13009,
17 except that in the case of tips received by an employee in
18 the course of his or her employment, the amounts shall
19 include only those tips included in statements furnished
20 to the employer, pursuant to Section 13055.

21 (2) Remuneration described in subdivisions (a), (b),
22 (f), and (l) of Section 13009, to the extent included in
23 gross income.

24 (3) Payments made by a third party for sick pay as
25 specified in Section 931.5.

26 (A) Any employer who receives a report of wages
27 from a third-party payer as provided for in subdivisions
28 (a) and (b) of Section 931.5 shall report those wages to the
29 department as required under paragraph (2) of
30 subdivision (a) of Section 1088.

31 (B) Any third-party payer described in Section 931.5
32 who fails to report wages to an employer as provided for
33 in that section shall report those wages to the department
34 as required under paragraph (2) of subdivision (a) of
35 Section 1088.

36 (b) (1) A person or entity shall not be required to
37 register with the Employment Development
38 Department solely for the purpose of reporting wages
39 subject to personal income tax pursuant to Section 1088
40 unless that registration is otherwise required by this code.

(2) A person or entity shall not be required to withhold any tax under Section 13020 for wages, as defined by this section, unless that person or entity is required to withhold tax for those wages as defined by Section 13009.

SEC. 3. Section 13050 of the Unemployment Insurance Code is amended to read:

13050. (a) Every employer or person required to deduct and withhold from an employee a tax under Section 986, 3260, or 13020, or who would have been required to deduct and withhold a tax under Section 13020 (determined without regard to Section 13025) if the employee had claimed no more than one withholding exemption, shall furnish to each employee in respect of the remuneration paid by the person to the employee during the calendar year, on or before January 31 of the succeeding year, or, if his or her employment is terminated before the close of the calendar year, on the day on which the last payment of remuneration is made, a written statement showing all of the following:

(1) The name of the person.

(2) The name of the employee, and his or her social security or identifying number if wages have been paid.

(3) ~~The total amount of wages, except that in the case of tips received by an employee in the course of his or her employment, the amounts required shall include only those tips included in statements furnished to the employer pursuant to Section 13055 subject to personal income tax, as defined by Section 13009.5.~~

(4) The total amount deducted and withheld as tax under Section 13020.

(5) The total amount of worker contributions paid by the employee pursuant to Section 986.

(6) The total amount of worker contributions paid by the employee pursuant to Section 3260.

(7) The total amount of elective deferrals (within the meaning of Section 402(g)(3) of the Internal Revenue Code) and compensation deferred pursuant to Section 457 of the Internal Revenue Code.

(b) The statement required to be furnished pursuant to this section in respect of any remuneration shall be

1 furnished at other times, shall contain other information,
2 and shall be in a form, as the department may by
3 authorized regulations prescribe.

4 (c) (1) A duplicate of any statement made pursuant
5 to this section and in accordance with authorized
6 regulations prescribed by the department shall, when
7 required by the regulations, be filed with the
8 department.

9 (2) Effective January 1, 1995, this subdivision shall
10 apply only to those employers exempted under
11 subdivision (h) of Section 1088 or subdivision (k) of
12 Section 13021 from the requirements to report individual
13 amounts withheld on the report of wages and to file the
14 annual reconciliation return for the 1995 calendar year
15 only. This subdivision shall remain in effect only until
16 March 1, 1996, and on that date is repealed, unless a later
17 enacted statute that is enacted before March 1, 1996,
18 deletes or extends that date.

19 (d) If, during any calendar year, any person makes a
20 payment of third-party sick pay to an employee, that
21 person shall, on or before January 15 of the succeeding
22 year, furnish a written statement to the employer in
23 respect of whom the payment was made showing all of
24 the following:

25 (1) The name and, if there is withholding under this
26 division, the social security number of that employee.

27 (2) The total amount of the third-party sick pay paid
28 to that employee during the calendar year.

29 (3) The total amount, if any, deducted and withheld
30 from that sick pay under this division. For purposes of the
31 preceding sentence, the term "third-party sick pay"
32 means any sick pay, as defined in subdivision (b) of
33 Section 13028.6, which does not constitute wages for
34 purposes of this division, determined without regard to
35 subdivision (a) of Section 13028.6.

36 (A) The reporting requirements of subdivision (a)
37 with respect to any payments shall, with respect to those
38 payments, be in lieu of the requirements of subdivision
39 (a) and of Section 18637 of the Revenue and Taxation
40 Code.

1 (B) For purposes of Chapter 10 (commencing with
2 Section 2101) of Part 1 of Division 1, the statements
3 required to be furnished by this subdivision shall be
4 treated as statements required under this section to be
5 furnished to employees.

6 (C) Every employer who receives a statement under
7 this subdivision with respect to sick pay paid to any
8 employee during any calendar year shall, on or before
9 January 31 of the succeeding year, furnish a written
10 statement to that employee showing all of the following:

11 (i) The information shown on the statement furnished
12 under this subdivision.

13 (ii) If any portion of the sick pay is excludable from
14 gross income pursuant to Article 3 (commencing with
15 Section 17131) of Chapter 3 of Part 10 of Division 2 of the
16 Revenue and Taxation Code, the portion that is not so
17 excludable and the portion that is so excludable. To the
18 extent practicable, the information required under the
19 preceding sentence shall be furnished on or with the
20 statement, if any, required under subdivision (a).

21 (e) The Franchise Tax Board shall be allowed access to
22 the information filed with the department pursuant to
23 this section.
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